



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/763,975

01/22/2004

Brian J. Cox

388700-058B

7891

37374

7590

09/16/2011

INSKEEP INTELLECTUAL PROPERTY GROUP, INC  
2281 W. 190TH STREET  
SUITE 200  
TORRANCE, CA 90504

EXAMINER

SEVERSON, RYAN J

ART UNIT

PAPER NUMBER

3731

NOTIFICATION DATE

DELIVERY MODE

09/16/2011

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

inskeepstaff@inskeplaw.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/763,975	<b>Applicant(s)</b> COX, BRIAN J.	
	<b>Examiner</b> RYAN SEVERSON	<b>Art Unit</b> 3731	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 April 2011.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on \_\_\_\_; the restriction requirement and election have been incorporated into this action.
- 4) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 5) ☒ Claim(s) 23-43 is/are pending in the application.
- 5a) Of the above claim(s) 29-39, 42 and 43 is/are withdrawn from consideration.
- 6) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 7) ☒ Claim(s) 23-28, 40 and 41 is/are rejected.
- 8) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 9) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 10) ☐ The specification is objected to by the Examiner.
- 11) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 12) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____.                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____.  | 6) <input type="checkbox"/> Other: ____.                          |

## DETAILED ACTION

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 4/27/2011 has been entered.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. **Claims 23-28, 40 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Deem et al. (6,231,597) in view of Boock (6,309,367).** Deem et al. disclose a device that is a support structure (see figure 4) sized for placement at an aneurysm (see figure 11B). The support structure has a bridge portion or occlusion region (15, see figure 1) that spans the neck of the aneurysm (see figure 11A). The support structure has an open configuration (see figure 4).

4. However, the embodiment of Deem et al. described above does not disclose the support structure is non-tubular. Attention is drawn to figure 13 of Deem et al., which shows a support structure that does not form a complete loop (see column 8, lines 8-

Art Unit: 3731

17), which would be beneficial because the support structure does not obstruct as much of the lumen, thereby reducing the resistance to blood flow through the area in which the support structure is placed. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the embodiment in figures 1 and 11A of Deem et al. with the support structure that does not encompass the entire circumference of the lumen in the manner taught in figure 13 so as not to obstruct as much of the lumen, thereby reducing the resistance to blood flow through the area in which the support structure is placed.

5. Further regarding claims 23 and 40, Deem et al. disclose substantially identical embodiments in figures 12 and 13, wherein the only difference is the end portions extend around the entire circumference of the lumen in figure 12 and do not in figure 13. This is further evidence that the support structure can perform equally well configured in either fashion and there would be no disadvantage to modifying the embodiment of figures 1 and 11A to have the end portions extend only about a portion of the circumference of the lumen.

6. Deem et al. fail to disclose a volumetrically expandable reactive material on the bridge portion. Attention is drawn to Boock, who teaches a swellable (volumetrically expandable) material (94, see figure 13) on the central portion (analogous to the bridge portion of Deem et al.) of an aneurysm treatment device to provide a seal at the aneurysm neck that prevents fluid from passing into the aneurysm (see column 4, lines 15-21 of Boock). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have included a volumetrically expandable

Art Unit: 3731

reactive material on the bridge portion of Deem et al. as suggested by Boock to seal the neck of the aneurysm.

7. Regarding claims 24, 25 and 41, the arced configuration of Deem et al. is curved and coiled (see figure 1) and conforms to the lumen it is placed in (see figure 11A).

8. Regarding claim 26, the support structure of Deem et al. includes a sinusoidal body portion (elements 14 form a sinusoidal pattern, see figure 1).

9. Regarding claim 27, the sinusoidal pattern of Deem et al. is only disposed in the bridge portion, which lies between the opposing ends of the support structure.

10. Regarding claim 28, the bridge portion of the combination of Deem et al. and Boock includes the reactive material (as described above in paragraph 6).

### ***Response to Arguments***

11. Applicant's arguments filed 4/27/2011 have been fully considered but they are not persuasive.

12. Applicant argues the combination of Deem et al. and Boock fails to disclose the causal relationship between the reactive state of the reactive material and the flow restriction characteristics of the bridge or occlusion region.

13. However, Examiner notes that each of claims 23 and 40 require the device or implant to have a bridge portion or occlusion region, respectively, where the bridge portion or occlusion region ***includes*** a reactive material. This is a clear indication that the reactive material is considered to be a part of the bridge portion or occlusion region. Turning to the prior art, Examiner contends that since the reactive material as taught by Boock is to be incorporated onto the bridge portion or occlusion region of Deem et al. as

Art Unit: 3731

suggested in the rejection above, the reactive material in the combination would be a part of the bridge portion or occlusion region, as claimed. At that point, the bridge portion or occlusion region restricts the flow of blood to an aneurysm because it includes the reactive material.

14. Applicant also argues the proposed modification as outlined above and in the previous rejection would improperly modify the principle of operation of the Deem et al. stent. However, Examiner contends that Deem et al. provide no disclosure discouraging the addition of other materials to improve upon the device. Simply because the Deem et al. device only spans the neck of the aneurysm is not an indication that one skilled in the art would have found the combination non-obvious. The modification would not render the Deem et al. device unsuitable for its intended purpose because it would still span the neck of an aneurysm.

### ***Conclusion***

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ryan Severson whose telephone number is (571) 272-4076. The examiner can normally be reached on Monday-Friday, 9:00 a.m. - 5:30 p.m.

16. If attempts to reach the examiner by telephone are unsuccessful, ***please contact the examiner's supervisor, Tom Hughes, at (571) 272-4357.*** The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

17. ***If there are any inquiries that are not being addressed by first contacting the Examiner or the Supervisor, you may send an email inquiry to***

TC3700\_Workgroup\_D\_Inquiries@uspto.gov.

Art Unit: 3731

18. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ryan J Severson/  
Primary Examiner, Art Unit 3731  
9/12/11